

MORGAN, LEWIS & BOCKIUS LLP
JOSEPH E. FLOREN (State Bar No. 168292)
KIMBERLY A. KANE (State Bar No. 226896)
One Market, Spear Street Tower
San Francisco, CA 94105-1126
Tel: 415.442.1000
Fax: 415.442.1001
E-mail: jfloren@morganlewis.com
kkane@morganlewis.com

MORGAN, LEWIS & BOCKIUS LLP
MARC J. SONNENFELD (*Pro Hac Vice*)
KAREN PIESLAK POHLMANN (*Pro Hac Vice*)
1701 Market Street
Philadelphia, PA 19103-3921
Tel: 215.963.5000
Fax: 215.963.5001
E-mail: msonnenfeld@morganlewis.com
kpohlmann@morganlewis.com

Attorneys for Defendant
HEWLETT-PACKARD COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALLAN J. NICOLOW, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

HEWLETT-PACKARD COMPANY, LEO
APOTHEKER, MARGARET C. WHITMAN,
CATHERINE A. LESJAK, and JAMES T.
MURRIN,

Defendants.

Case No. 12-cv-05980-CRB

**DEFENDANT HEWLETT-PACKARD
COMPANY'S RESPONSE TO
MOTIONS SEEKING
CONSOLIDATION OF ALL
RELATED ACTIONS, APPOINTMENT
OF LEAD PLAINTIFF AND
APPROVAL OF SELECTION OF
LEAD COUNSEL**

Date: March 1, 2013
Time: 10:00 a.m.
Dept: Courtroom 6, 17th Floor
Judge: Hon. Charles R. Breyer

Complaint filed: Nov. 26, 2012
Trial date: None Set

1 DAVIN POKOIK, Individually and on Behalf
2 of All Others Similarly Situated,

3 Plaintiff,

4 vs.

5 HEWLETT-PACKARD COMPANY,
6 AUTONOMY CORPORATION PLC,
7 DELOITTE LLP, LEO APOTHEKER,
8 MARGARET C. WHITMAN, CATHERINE
9 A. LESJAK, JAMES T. MURRIN, MICHAEL
10 R. LYNCH, and SUSHOVAN HUSSAIN,

11 Defendants.

Case No. 12-cv-06074-CRB

Complaint filed: Nov. 30, 2012
Trial date: None Set

12 PAUL NEUMANN,

13 Plaintiff,

14 vs.

15 HEWLETT-PACKARD COMPANY,
16 MARGARET C. WHITMAN, LEO
17 APOTHEKER, JAMES T. MURRIN,
18 CATHERINE A. LESJAK, and MARK
19 HURD,

20 Defendants.

Case No. 13-cv-0284-EJD

Complaint filed: Jan. 18, 2013
Trial date: None Set

21 Defendant Hewlett-Packard Company (“HP”) hereby submits this Response to the
22 pending motions for consolidation, appointment of lead plaintiff and for approval of movants’
23 selection of lead counsel on behalf of the putative class (the “Motions”).

24 HP takes no position with respect to the appointment of lead plaintiff or lead plaintiff’s
25 counsel,¹ but reserves its right to contest class certification at the appropriate time on any and all

26 ¹ The weight of authority suggests that defendants do not have standing to oppose the
27 appointment of lead plaintiffs, as the Private Securities Litigation Reform Act of 1995
28 (“PSLRA”) specifically provides that the presumption of adequacy of a lead plaintiff “may be
rebutted only upon proof by a member of the purported plaintiff class.” 15 U.S.C. § 78u–
4(a)(3)(B)(iii)(II); *see Takeda v. Turbodyne Techs., Inc.*, 67 F. Supp. 2d 1129, 1138 (C.D. Cal.
1999) (“defendants lack standing to object to the adequacy or typicality of the proposed lead
plaintiffs at this preliminary stage of the litigation.”); *see also In re Surebeam Corp. Sec. Litig.*,
No. 03 CV 1721, 2004 WL 5159061, at *8 n.5 (S.D. Cal. Jan. 5, 2004); *Prissert v. Emcore Corp.*,
No. 08-1190, 2010 WL 7926232, at *3 (D.N.M. July 14, 2010) (cases following *Takeda*); *cf.*
Query v. Maxim Integrated Prods., Inc., 558 F. Supp. 2d 969, 972 n.1 (N.D. Cal. 2008) (“there
appears to be a split of authority as to whether defendants even have standing to oppose a motion
for lead plaintiff”) (citing cases outside of the Ninth Circuit).

1 grounds including, but not limited to, the adequacy and typicality of the lead plaintiff. *See* 15
 2 U.S.C. § 78u-4(a)(3) (establishing procedure for appointment of lead plaintiffs and lead counsel
 3 that is preliminary to, and distinct from, class certification); *Puente v. Chinacast Educ. Corp.*,
 4 Nos. CV 12-4621, CV 12-5107, 2012 WL 3731822, at *3 (C.D. Cal. Aug. 22, 2012) (“[A] wide
 5 ranging analysis . . . is not appropriate’ to determine whether [movant] has made a prima facie
 6 showing that it satisfies the requirements of Rule 23, and such a wide ranging analysis ‘should be
 7 left for consideration on a motion for class certification.’”) (quoting *Fischler v. AmSouth*
 8 *Bancorp.*, No. 96-1567-Civ-T-17A, 1997 WL 118429, at *2 (M.D. Fla. Feb. 6, 1997)); *In re*
 9 *Chiron Corp. Sec. Litig.*, No. C-04-4293, 2007 WL 4249902, at *13 (N.D. Cal. Nov. 30, 2007)
 10 (“‘The appointment of lead plaintiffs occurring as it does in advance of class discovery, is not a
 11 final ruling on their appropriateness as Class Representatives. . . . The proposed class and Class
 12 Representatives are to be reviewed according to the standards of Rule 23, without any deference
 13 to the earlier determinations made in the appointment of Lead Plaintiffs.’”) (quoting *In re Oxford*
 14 *Health Plans, Inc. Sec. Litig.*, 191 F.R.D. 369, 373 (S.D.N.Y. 2000)); *Tanne v. Autobytel, Inc.*,
 15 226 F.R.D. 659, 666 (C.D. Cal. 2005) (“‘Evidence regarding the requirements of Rule 23 will, of
 16 course, be heard in full at the class certification hearing. There is no need to require anything
 17 more than a preliminary showing at this stage.’”) (quoting *Gluck v. CellStar Corp.*, 976 F. Supp
 18 542, 546 (N.D. Tex. 1997)); *Yousefi v. Lockheed Martin Corp.*, 70 F. Supp. 2d 1061, 1071 (C.D.
 19 Cal. 1999) (“[B]ecause Section 78u-4 only requires preliminary class certification findings, the
 20 Court does not preclude any party from contesting the ultimate class certification on the basis of
 21 the instant findings.”) (citing cases).

22 With respect to the motions to consolidate the above-captioned putative class actions, the
 23 *Nicolow* and *Pokoik* cases plainly meet the legal standard for consolidation and thus should be
 24 consolidated into a single action. The Autonomy-related claims in the more recently filed
 25 *Neumann* action likewise clearly meet the standard for consolidation. Moreover, such claims
 26 cannot proceed separately in different actions, given that (among other things) only a court-
 27 appointed lead plaintiff may pursue such claims under the federal securities laws, and the Court
 28 will appoint lead plaintiff(s) and lead counsel pursuant to the PSLRA with respect to these claims

1 based upon the pending motions in the *Nicolow* and *Pokoik* actions. *See* 15 U.S.C. § 78u-
2 4(a)(3)(B)(i)-(ii). Except as expressly stated above, HP takes no position on the motions to
3 consolidate and expressly reserves all rights and defenses, including but not limited to its rights to
4 seek severance, dismissal, and/or other relief with respect to any claims asserted in these actions
5 or which may hereafter be asserted in any consolidated action.
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7 Respectfully submitted,

8 MORGAN, LEWIS & BOCKIUS LLP

9 Dated: February 8, 2013

10 By /s/ Joseph E. Floren
JOSEPH E. FLOREN

11 Attorneys for Defendant
12 HEWLETT-PACKARD COMPANY
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